LAW360

Portfolio Media. Inc. | 111 West 19th Street, 5th Floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Takeaways From Early NY Tuition Refund Rulings

By **Muhammad Faridi and Timothy Smith** (February 11, 2021, 4:21 PM EST)

Muhammad Faridi

Timothy Smith

Since last spring, college students have filed hundreds of lawsuits seeking refunds due to their schools' suspension of in-person instruction during the pandemic.

The effect of these cases could be far-reaching. In addition to the thousands of colleges that closed their campuses, countless businesses in service industries have had to cancel or modify the services that they deliver during the pandemic. Those businesses, too, may be susceptible to claims of refunds, and the rulings in the college tuition cases will be instructive in those disputes.

The claims in the students' lawsuits vary, but certain facts are typical. In most cases, the students have asserted claims for breach of contract, unjust enrichment and various state law torts, claiming entitlement to the difference between the on-campus experience they purportedly purchased and the online education they received or are receiving.

The schools have often responded by moving to dismiss on the following bases, among others: the schools never specifically promised to provide in-person instruction; the students' claims for damages are impermissibly speculative; and the unjust enrichment claims should be dismissed on equitable bases.[1]

Various courts — both state and federal — have now resolved some of these motions, and the results have been mixed. Generally, at least some of the students' causes of action have survived.[2] A minority of courts have dismissed the entire case, denying the students any relief.[3]

Three recent decisions from New York's federal courts exemplify this trend and illuminate issues that are likely to be determinative in many refund disputes. The first two cases, Bergeron v. Rochester Institute of Technology and Ford v. Rensselaer Polytechnic Institute involved claims brought against RIT and RPI in the U.S. District Court for the Western District of New York and the U.S. District Court for the Northern District of New York, respectively.[4]

In each case, the court held that the students had plausibly alleged claims for breach of contract and unjust enrichment, and it permitted those claims to proceed to discovery. The courts dismissed various other claims, though, including claims for conversion and false advertising.

The third decision came in Hassan v. Fordham University, a case brought against Fordham in the U.S. District Court for the Southern District of New York.[5] In that case, the court granted Fordham's motion to dismiss each of the students' claims, including those for breach of contract and unjust enrichment.

Collectively, these decisions illustrate the type of statements and conduct that may — and may not — create a binding obligation to provide in-person instruction, at least under New York law. Under New York law, according to the Western District of New York, "there is an implied contract between a student and the college or university he attends."[6]

However, according to the Northern District of New York "only specific promises in a school's bulletins, curriculars, and handbooks, which are material to the student's relationship with the school, are enforceable."[7]

The courts in the RIT and RPI cases held that the students had alleged specific promises to provide in-person programs.[8]

In the RIT case, the court emphasized that RIT allegedly separated its "in-person, hands-on program" from its "fully online distance learning programs," treating them as mutually exclusive and charging significantly different tuition rates.[9]

In addition, the court found that RIT had allegedly made a "multitude of promises" in various publications, including an admissions letter and a student handbook, regarding "the benefits of its in-person, on-campus program."[10] These "included opportunities to work directly with faculty in their labs, vibrant and diverse campus life, access to superior technology, and robust on-campus support."[11]

Similarly, in the RPI case, the court found that, in its catalog and other publications, RPI had allegedly made "bold claims" about its in-person programming and "hammered repeatedly on the benefits of those programs."[12] The court further observed that RPI's catalog described a program that relied on a residential commons program that could be fairly be characterized as mandatory.[13]

In the Fordham case, by contrast, the court found that the student failed to identify a specific promise to provide in-person instruction. The student argued that such a promise was contained, first, in Fordham's course catalog, which distinguished between in-person and online courses; second, in Fordham's policies, which stated that students were "expected to attend every class ... for which they are registered"; and, third, in Fordham's marketing the on-campus experience as a benefit of enrollment.[14]

The court found that the catalog contained no specific promise because it never explicitly stated that aspects of an in-person course were not subject to change.[15] And the court found that Fordham's marketing and policy regarding attendance were too general to constitute a discrete promise to provide in-person education.[16]

Although the courts in these cases reached different results, the decisions reinforce the principle that the written terms of an agreement will be paramount in any contract dispute. It bears noting, however, that a court's assessment of a contract claim in the post-secondary education context may be more demanding than in other contexts. For example, at least under New York law, courts will not infer contract terms from a college's prior dealings with its students.[17] In other industries, however, prior

courses of dealing or industry custom may be sufficient to create binding obligations to provide certain services.

The RIT court's analysis of the plaintiffs' damages theory is also worth highlighting. Like many schools, RIT argued that the students' request for damages required the court to speculate impermissibly "about the difference between the subjective value of distance learning and the subjective value of on-campus, in-person instruction."[18]

But the court disagreed, observing that plaintiffs clearly sought to recover market damages — that is, "the difference between the contract price and the market value of the goods at the time of the breach."[19] A request for market damages was "sufficiently specific," the court concluded, suggesting a potential theory of recovery for plaintiffs in tuition cases and beyond.

This group of decisions also illustrates a potential split in how courts will resolve unjust enrichment claims in refund cases. In many jurisdictions, including New York, an unjust enrichment claim requires a plaintiff to prove that a defendant benefitted at the plaintiff's expense, and that equity and good conscience require restitution.[20]

Addressing the latter requirement, the court in the RPI case rejected RPI's argument that it was unjust to require RPI to reimburse the students after "the pandemic demanded the end of [RPI's] in-person programming," though the court considered this a close call.[21] The court in the Fordham case concluded otherwise, reasoning that Fordham had not allegedly done anything "tortious or fraudulent."[22]

The results in these cases, although different, can be reconciled based on the specific statements made by each institution. In any event, the impact of these holdings likely will not be limited to the field of education, because numerous industries face the same question regarding which party should — in terms of equity — bear the cost for services allegedly diminished during the pandemic.

Going forward, we expect that lawsuits seeking refunds will continue to proliferate, given the students' successes at the pleadings stage in RPI, RIT and similar cases brought in other jurisdictions.[23]

Also, in the hundreds of refund cases pending, we expect that many universities will strongly consider settling early in the proceedings, given the trend of judges refusing to dismiss the students' cases.

We also anticipate that many colleges will, for future semesters, expressly disclaim any obligation to provide in-person instruction. Many have already done so.

At the same time, we do not expect that the Fordham decision will prove an outlier. Multiple courts have dismissed complaints based on findings that the college never promised a particular method of instruction,[24] and the absence of a specific promise to provide in-person instruction will likely compel the same conclusion in many other cases.

It also remains uncertain whether the students in RPI and RIT will ultimately succeed on the merits following discovery. Although the students in these cases have overcome a major obstacle in persuading the court to adopt their interpretations of their respective contracts, RPI or RIT could succeed in establishing a defense to the breach of contract claims.

For example, the RPI court noted that RPI may ultimately prove impossibility, rendering the contract

unenforceable.[25] And, as to the unjust enrichment claims, facts may emerge in discovery showing that the equities favor RPI or RIT, thus precluding recovery on those claims.

Muhammad U. Faridi is a partner and Timothy Smith is an associate at Patterson Belknap Webb & Tyler LLP.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] The schools have also typically raised a defense that is unique to the context of post-secondary education: the educational malpractice doctrine. This doctrine generally bars claims that would "require an inquiry into the nuances of educational processes and theories," but not claims that require an assessment of whether a college breached specific promises to students. Bridget McCarthy v. Loyola Marymount Univ., No. 2:20-CV-04668-SB, 2021 WL 268242, at *3 (C.D. Cal. Jan. 8, 2021).

[2] See Doe v. Univ., No. 20-1264, 2020 WL 7634159, at *2 (C.D. Ill. Dec. 22, 2020) (collecting cases).

[3] E.g., Lindner v. Occidental Coll., No. CV 20-8481-JFW(RAOX), 2020 WL 7350212, at *1 (C.D. Cal. Dec. 11, 2020).

[4] Bergeron v. Rochester Inst. of Tech., No. 20-CV-6283 (CJS), 2020 WL 7486682 (W.D.N.Y. Dec. 18, 2020); Ford v. Rensselaer Polytechnic Inst., No. 1:20-CV-470, 2020 WL 7389155 (N.D.N.Y. Dec. 16, 2020).

[5] Hassan v. Fordham University, No. 20-CV-3265 (KMW), 2021 WL 293255, at *1 (S.D.N.Y. Jan. 28, 2021).

[6] Bergeron, 2020 WL 7486682, at *5.

[7] Ford, 2020 WL 7389155, at *3.

[8] Ford, 2020 WL 7389155, at *5-6; Bergeron, 2020 WL 7486682, at *7-8.

[9] Bergeron, 2020 WL 7486682, at *1.

[10] Id. at *4.

[11] Id.

[12] Ford, 2020 WL 7389155, at *4.

[13] Id.

[14] Hassan, 2021 WL 293255, at *5.

[15] Id. at *6.

[16] Id.

[17] Ford, 2020 WL 7389155, at *4.

[18] Bergeron, 2020 WL 7486682, at *8.

[19] Id.

[20] Ford, 2020 WL 7389155, at *4.

[21] Id.

[22] Hassan, 2021 WL 293255, at *11.

[23] See, e.g., Rosado v. Barry Univ. Inc., No. 1:20-CV-21813-JEM, 2020 WL 6438684, at *4 (S.D. Fla. Oct. 30, 2020); Chong et al. v Northeastern U., No. CV 20-10844-RGS, 2020 WL 7338499, at *3 (D. Mass. Dec. 14, 2020).

[24] E.g. Horrigan v. Eastern Michigan University, No. 20-000075-MK, 2020 WL 6733786, at *5 (Mich. Ct. Cl. Sep. 24, 2020).